No. 365

FILED
DEC 24 1957
JOHN T. FEY, Clerk

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 27,572

A. H. BULL STEAMSHIP CO.,
Plaintiff-Appellee,

against

SEAFARERS' INTERNATIONAL UNION OF NORTH AMERICA, ATLANTIC AND GULF DISTRICT, AFL-CIO,
Defendant-Appellant

JOINT APPENDIX

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INDEX TO RECORD ON APPEAL

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Defendant-Appellant.

24 840
CIVIL No. ~~18007~~

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Docket Entries

9/16/57	Complaint filed—Summons Issued.
9/17/57	Summons Ret'd & filed—deft. served.
9/17/57	By Bruchhausen, J. Order to Show Cause with Proof of Service.
	Filed for Injunction etc. 9/18/57.
9/18/57	Before Bruchhausen, J. Hearing on Order to show cause for injunction etc. Decision Reserved. All papers by 9/19/57 at 2 P. M.
9/18/57	Affidavit of S. W. Miller Filed.
9/18/57	Affidavit of Paul Hall Filed.
9/18/57	Notice of Cross Motion to dismiss complaint.
9/27/57	By Bruchhausen, J. Decision on Motion. Plaintiff's Motion is Granted. Deft's Cross Motion Denied. Settle Order on two days' notice, etc. See opinion.
9/30/57	By Bruchhausen, J. Order Filed Granting Preliminary Injunction.
9/30/57	Bond on Injunction Filed.
9/30/57	By Bruchhausen, J. Order Filed Re: Preference.
9/30/57	Batch of letters Filed.
9/30/57	Unsigned Order (proposed) Filed.
9/30/57	Notice of Appeal filed.
9/30/57	$250.00 Paid into Registry of Court in Lieu of Bond.

[1] **Complaint**

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

A. H. BULL STEAMSHIP CO.,
Plaintiff,
against
SEAFARERS' INTERNATIONAL UNION OF NORTH AMERICA, ATLANTIC AND GULF DISTRICT, AFL-CIO,
Defendant.

CIV. No. 1800.

Plaintiff, by its attorneys, alleges, upon information and belief, as follows:

1. Plaintiff, a corporation duly organized and existing by virtue of the laws of the State of Delaware with its principal offices at 115 Broad Street, New York City, New York, is, and for many years has been, engaged in interstate and foreign commerce, being a common carrier by sea operating American-flag, dry cargo and other vessels in foreign and coastwise trade.

2. Defendant is an unincorporated labor organization engaged in representing or acting for its members and doing business as such through its duly authorized officers and agents within the State, City and Eastern District of New York with its principal place of business at 675 Fourth Avenue, Brooklyn, New York.

3. Jurisdiction of this Court over this action derives from, and is based upon, the Labor Management Relations Act of 1947, Title III, § 301, 61 Stat. 156, (29 U. S. C. A. § 185).

[2] 4. On or about October 3, 1956 plaintiff and defendant Union executed a written Amendment to a collective bargaining agreement then existing between them covering the unlicensed merchant seamen employed upon the

American-flag, dry cargo vessels operated by plaintiff in its regular course of business, which Amendment, among other things, extended the existing collective bargaining agreement between the parties to September 30, 1958. Said agreement, as so amended, a copy of which is attached hereto and made a part hereof as Exhibit A, is presently and, at all times material hereto, has been in full force and effect between the parties.

5. Article II of said agreement provides, in part, as follows:

> "Section 4. Stoppage of Work. There shall be no strikes, lockouts or stoppages of work while the provisions of this agreement are in effect."

6. Commencing on or about August 19, 1956, defendant Union, acting through its officers, agents, employees and members, has caused various vessels owned and operated by plaintiff to be picketed at plaintiff's Brooklyn Terminal in the Port of New York and has thereby ordered, induced and caused a complete stoppage of all work being performed aboard said vessels by the crews thereof.

7. Said work stoppages have to date resulted in preventing cargoes from being loaded or unloaded and have to date compelled plaintiff to cancel the departure from New York of four vessels originally due to depart on August 22nd and thereafter.

[3] 8. On or about September 11, 1957, defendant, acting through its officers, agents, employees and members, has similarly caused various of plaintiff's vessels to be picketed at the Port of San Juan, Puerto Rico, resulting in a total stoppage of all work being performed aboard said vessels. In addition, other vessels owned or operated by plaintiff have not been able to load cargoes consigned to New York and San Juan by reason of defendant's strike at said ports.

9. Defendant's officers and members have repeatedly threatened to cause and, unless restrained, will cause addi-

tional work stoppages aboard plaintiff's vessels at other ports of call.

10. The aforesaid work stoppages are in violation of said written collective bargaining agreement, as amended, and, in particular, Article II, Section 4 thereof.

11. Plaintiff has at all times past performed and is continuing to perform all the terms and conditions of the collective bargaining agreement with each respective defendant Union.

12. The work stoppages caused by defendants aboard plaintiff's vessels have caused and are causing plaintiff serious loss, damage and irreparable injury for which plaintiff has no adequate legal remedy in that plaintiff is daily losing to its competitors much valuable freight and passenger business which it may never recapture and is suffering an irreparable loss of good will among shippers, governmental agencies, prospective passengers and other segments of the public. Moreover, if said work stoppages continue, defendants' ability to respond in damages for the monetary loss caused plaintiff will be exhausted.

[4] 13. Said work stoppages have to date (i.e., September 16, 1957) caused plaintiff monetary damages on account of the six vessels strike-bound at New York and San Juan alone aggregating not less than $160,000 over and above plaintiff's loss of profits and good will occasioned by the necessity of plaintiff's customers placing their shipments with plaintiff's competitors.

14. Such damages and loss of profits and good will are continuing and will continue each day unless defendants are compelled to abide by their respective collective bargaining agreements.

15. Because of the continuing nature of the damage plaintiff is sustaining each day it is denied the use of its vessels by defendants' unlawful work stoppages, plaintiff requests leave to amend and supplement this complaint as and when the total damage sustained can be ascertained and calculated with reasonable accuracy.

WHEREFORE, plaintiff demands judgment as follows:

(a) that the Court find and declare that defendants, by picketing, striking and refusing to work upon plaintiff's vessels, are in violation of their respective collective bargaining agreements with plaintiff as amended;

(b) that the Court order defendants to perform specifically, for the duration of their respective collective bargaining agreements, their obligation not to strike or cause work stoppages aboard plaintiff's vessels;

[5] (c) that the Court temporarily and permanently enjoin defendants, their officers, agents and employees and all persons acting in concert and combination with defendants, from picketing, striking or otherwise causing any work stoppage aboard any or all of plaintiff's vessels so long as said collective bargaining agreements shall remain in full force and effect;

(d) that the Court award plaintiff such damages as it has sustained to date and hereafter in consequence of defendants' violation of its contractual obligation together with the costs and disbursements of this action;

(e) that the Court grant plaintiff such other, further and different relief as to the Court may appear just in the premises.

Dated: September 23, 1957

SATTERLEE, BROWNE & CHERBONNIER

By s/ A. V. CHERBONNIER
A Member of the Firm

DONOVAN LEISURE NEWTON & IRVINE

By s/ JAMES V. HAYES
A Member of the Firm

Attorneys for Plaintiff
2 Wall Street
New York 5, N. Y.

EXHIBIT A

Freightship Agreement

Between

SEAFARERS INTERNATIONAL UNION

ATLANTIC & GULF DISTRICT

AFL-CIO

and

Its Contracted Companies, including

A. H. BUIL STEAMSHIP CO.,

Effective October 15, 1956

Contract Expires September 30, 1958

[Facsimile copies of this Exhibit will be handed up upon argument.]

Order to Show Cause

* * *

[19] Upon the complaint herein and the annexed affidavit of MILTON WILLIAMS, it is

ORDERED, that defendant Seafarers' International Union of North America, Atlantic and Gulf District, AFL-CIO, show cause before this Court at a Motion Term thereof to be held in the Federal Building, Room 735, Washington and Johnson Streets, Brooklyn, New York, on the 18th day of September, 1957, at 10:00 A. M. or as soon thereafter as counsel can be heard, why an order should not be entered herein enjoining said defendant, its officers, agents, employees, members and attorneys and all persons acting in concert with it from inciting, causing or engaging in any strike or work stoppage affecting plaintiff's vessels or otherwise violating, or inducing or causing others to violate, defendant's existing collective bargaining agreement as amended with plaintiff and for such other, further and different relief as the Court may deem just in the premises; and it is

FURTHER ORDERED, that service of a copy of this order together with a copy of the affidavit annexed hereto in the [20] manner prescribed by Title III, § 301(d) of the Labor Management Relations Act of 1947, 29 U. S. C. § 185(d) on or before September 17, 1957, at 3:00 P. M. shall be sufficient.

Dated: Brooklyn, N. Y.
September 16, 1957

s/ WALTER BRUCHHAUSEN
U. S. D. J.

Affidavit of Milton Williams

* * *

[21] MILTON WILLIAMS, being duly sworn, deposes and says:

1. I am Vice President in charge of operations of A. H. BULL & Co., INC., a subsidiary of plaintiff, A. H. BULL STEAMSHIP Co., engaged in operating plaintiff's American-flag, ocean-going, dry cargo vessels. Since 1936, with the exception of four and a half years in service from 1941 to 1946, I have represented plaintiff in its labor negotiations with the various maritime unions with which plaintiff has had in the past, and now has, collective bargaining agreements.

I make this affidavit in support of plaintiff's application for an order to show cause why defendant, Seafarers International Union of North America, Atlantic and Gulf District, AFL-CIO ("SIU" herein) should not be enjoined *pendente lite* from striking or otherwise violating its collective bargaining agreement with plaintiff.

2. For several decades plaintiff and its affiliated companies have engaged in the ocean transportation of freight [22] and passengers in interstate and foreign commerce. Plaintiff currently maintains dock and terminal facilities in the Ports of New York, Philadelphia, Baltimore and San Juan, Puerto Rico. Its vessels regularly call at these and other American and foreign ports to receive and discharge cargoes and passengers.

3. Throughout the time that I have handled Bull's labor relations defendant SIU (or its predecessors) has acted as the collective bargaining agent for the unlicensed seamen employed aboard plaintiff's American-flag vessels. Plaintiff's labor relations with the SIU have always, within my memory, been governed by a formal, written collective bargaining agreement. The current agreement, as amended in October of 1956, will not expire by its terms until September 30, 1958. A copy of this collective bargaining agreement, as amended, is attached to the complaint herein as Exhibit A thereto.

Affidavit of Milton Williams

This agreement constitutes the SIU's standard "Freightship Agreement," and is presently in full force and effect and binding upon, not only every shipping company, including plaintiff, which is signatory thereto, but also, of course, upon the SIU.

4. There is contained in this agreement, and has been in every such agreement between the SIU and the shipping companies with which it holds such agreements, since 1940 the following "no strike" clause:

> "Stoppage of Work. There shall be no strikes, lockouts or stoppages of work while the provisions of this agreement are in effect." (Complaint, Ex. A, Art. II, Sec. 4)

5. In 1947, and at the insistence of the SIU, it was agreed by the various shipping companies contracting with it that, during the life of this collective bargaining agreement [23] and any extensions thereof, any party could at any time reopen the contract and negotiate changes in the "wage scale or any monetary matters."

I was a member of the negotiating committee in 1947 when the inclusion of such a wage reopener in the collective bargaining agreement was discussed. At that time the Union made it abundantly clear that its purpose in insisting upon such a clause derived from the fact that other maritime unions representing unlicensed personnel enjoyed contracts which expired prior to the expiration date of the SIU standard agreement. Thus, wage increases secured by these other unions, many of which are directly competitive with the SIU, regularly became effective prior to any increases which the SIU might later secure from the companies with which it contracted. At no time in these discussions or thereafter did the Union ever intimate or suggest that such a wage reopener would, in effect, repeal the "no strike" clause. Never during the course of these discussions or thereafter did the Union ever intimate or suggest that a reopening of the contract was authorized for any

purpose other than securing for SIU members the same, or at least similar, wage benefits which other maritime unions might have secured at the time. On the contrary, the Union made it clear that, if economic conditions should turn downward and the companies request a wage reduction which the Union would not accept, the companies would have no right to take economic action against the seamen.

In other words, it was at all times mutually understood and agreed that the wage reopener would affect no other provision of the collective bargaining agreement and, specifically, would not in any manner nullify or modify the "no [24] strike—no lockout" clause of the contract. Indeed, it was expressly provided in the preamble to the agreement that "Applications by either party to open negotiations for changes in the wage scale or any monetary matters any time during the life of this agreement shall not be deemed cause for termination of this agreement."

6. Nevertheless, despite the "no strike" clause (which, as noted, was in the contract seven years prior to the adoption of the wage reopener and has remained unchanged in seventeen years in all), and despite the fact that plaintiff has in good faith offered defendant the same 6% increase in the industry scale achieved by defendant's competitor unions in June of this year (effective as of the earliest date that such increase can become effective on any SIU-contract vessel), the SIU has singled out plaintiff of all the sixty-odd companies which it has under contract and has struck its vessels, resulting at the present time in the idling of six vessels normally engaged in plaintiff's regular New York-to-Puerto Rico service and generally disrupting plaintiff's other services.

7. There can be no doubt as to the reason why the SIU has undertaken at this time to wage economic warfare against plaintiff. In December of last year, stock ownership of plaintiff passed from its former stockholders to American Coal Shipping, Inc., a corporation recently organized for the primary purpose of transporting American-

produced coal to Europe. Defendant SIU is, I understand, currently engaged in a dispute with its principal competitor, the National Maritime Union, AFL-CIO, over representation of the unlicensed seamen employed aboard the vessels of American Coal Shipping. Neither I nor any other person engaged in plaintiff's operations have participated in [25] any way in our parent company's union problems. It is apparent to me from the repeated statements of SIU officials that it seeks, by the current strike against plaintiff, to gain some advantage in its contest with the National Maritime Union over representation of American Coal Shipping seamen. Be that as it may, Mr. Paul Hall, SIU Secretary-Treasurer and its principal officer, has again and again, in my presence, affirmed that the SIU has, in labor parlance, "no beef with the Bull Lines."

I further understand that the employment of merchant seamen aboard American Coal Shipping vessels is being conducted under a decree issued by the United States District Court for the Southern District of New York, and that there are also presently pending before the National Labor Relations Board a number of unresolved charges of unfair labor practices, none of which in any respect relate to or affect any phase of plaintiff's operation, its vessels, or its employees. I have also been informed that the NLRB is currently processing a petition for a representation or certification election aboard the American Coal Shipping vessels.

8. It is against this background that the "negotiations" which preceded defendant's current strike against Bull must be assessed:

(a) In the late spring of this year, it was announced that the American Merchant Marine Institute had, as a result of negotiations with the National Maritime Union and other labor organizations, agreed to an across-the-board 6% wage increase on all American-flag vessels under contract with those unions.

[26] (b) Thereafter and on June 17, 1957, defendant SIU notified all companies which it had under contract, including plaintiff, of its desire pursuant to its collective bargaining agreement, "to open negotiations for a revision of wages and other monetary matters." No other purpose or subject of negotiations was specified. On June 24, at a meeting attended by various representatives of the SIU-contract shipping companies, Mr. Hall verbally announced that the Union was demanding *either* a 50% to 100% wage increase, double vacation pay, and other equally fantastic revisions, *or, in the alternative,* a 6% wage increase across-the-board, plus "guaranteed employment" for SIU men aboard "company vessels." At this meeting Mr. Hall expressly informed plaintiff's representatives that he would deal only with plaintiff's "principals" in any ensuing negotiations.

(c) Thereafter on July 2, July 10, and July 15, I met, together with other of plaintiff's representatives, including counsel, with Mr. Hall. On each of these occasions Mr. Hall repeatedly assured us that he had no wage dispute with plaintiff and proceeded in great detail to relate the problems his union was allegedly having in its fight with the National Maritime Union over the representation of American Coal Shipping seamen. On each of these occasions we, on behalf of plaintiff, offered to grant an immediate 6% increase to our licensed seamen in line with the industry pattern accepted in June by the companies represented by the American Merchant Marine Institute. We also repeatedly offered to submit any additional monetary matters to arbitration. We also offered to join with the Union in seeking federal mediation of any bona fide controversy between the SIU and plaintiff. [27] Mr. Hall uniformly reverted to American Coal Shipping and to various changes he wished to effect in American Coal Shipping's employment practices. At no point did he evince any genuine interest or concern over "wages or other monetary matters."

(d) As a result of these conversations Mr. Hall, if he did not appreciate the fact already, was made to realize that

plaintiff could never agree to a wage scale substantially in excess of the industry pattern and remain an effective competitor in the maritime industry. Knowing this and knowing that never in the history of collective bargaining in this industry has there been a substantial discrepancy between the wage scale on one company's vessels and those of the industry in general, Mr. Hall, nevertheless, on August 15, 1957, delivered to me the Union's "final offer" to plaintiff, an offer demanding, among other things, that, effective July 1, 1957, the wage, overtime and penalty rates through all classifications of plaintiff's unlicensed seamen would be increased 20%.

(e) Thereafter, on August 19, defendant began picketing plaintiff's vessels at its Brooklyn terminal, resulting in a total stoppage of all work by defendant's seamen and many other of plaintiff's employees who have refused to cross picket lines. Within a week four vessels were, and still today are, strike-bound in Brooklyn.

(f) On September 11, despite the unsuccessful intervention of federal conciliators, defendant spread the strike to San Juan, tying up two more of plaintiff's ships and virtually closing down plaintiff's regular New York-to-Puerto Rico service. Defendant's officers and agents are now threatening further strike action at the ports of Philadelphia and Baltimore.

[28] 9. In view of the foregoing, it is apparent that defendant has no dispute with plaintiff but is simply exercising its undoubted economic power against plaintiff for the sole purpose of putting pressure upon American Coal Shipping, plaintiff's parent corporation. I, of course, am not competent or even inclined to comment upon the legality of SIU's taking such action in the face of the decree of the United States District for the Southern District of New York. I am certain, however, that plaintiff is, in defendant's eyes, merely a pawn in its struggle for representation of plaintiff's parent company's unlicensed seamen.

Obviously, if the defendant persists there is no way out for plaintiff unless the defendant be compelled to respect and abide by the provisions of its collective bargaining agreement. As counsel will demonstrate in the memorandum to be submitted with this application, there can be no question but that defendant's present strike is in violation of that agreement and that plaintiff is entitled to have such violation enjoined.

10. That plaintiff's legal remedy for damages is inadequate in the present circumstances is obvious. Plaintiff is a going concern in a highly competitive industry. Not only has the present strike removed effective units from plaintiff's fleet which otherwise would be available for the transportation of cargoes anywhere in the world, but more important—and more directly affected—is the complete disruption of plaintiff's regular service from New York, Philadelphia and Baltimore to San Juan and return. Plaintiff is every day losing assured business from longstanding customers who over the years have come to depend upon the reliability of plaintiff's service for [29] their shipments. With the loss of this business goes the loss of the concomitant good will which plaintiff has achieved over the years. Unless plaintiff can resume its service immediately it may have lost this business permanently to competitors who have already actively entered the trade.

Moreover, if this strike continues a serious question will arise as to this defendant's financial resources to answer for any substantial monetary judgment which may be entered against it ultimately in this action. In this regard, the Court will note that plaintiff's damages as of today, as alleged in the complaint, are in excess of $160,000 (limited to the damages sustained by reason of the six ships strikebound at New York and San Juan and without regard to the loss of actual profit or of good will). These damages, of course, will continue to accrue each day the strike continues.

Affidavit of Milton Williams

Unless defendant's unlawful strike is promptly enjoined plaintiff will continue to suffer great and irreparable injury for which it has no adequate legal remedy.

11. Plaintiff asks to proceed by order to show cause because the continuing nature of the damage which it is sustaining necessitates a prompt hearing of the within application and insufficient time is available for proceeding by notice of motion before this Court's next motion day on September 18, 1957.

12. No prior application for such an order to show cause as is submitted herewith has been made to this Court or to any judge thereof.

[30] WHEREFORE, on behalf of plaintiff, A. H. Bull Steamship Co., I submit that an order to show cause should issue herein and that, upon its return, this Court should issue its injunction *pendente lite* enjoining the defendant, its officers, agents, employees, members and attorneys and all persons acting in concert with it from inciting, causing or engaging in any strike or work stoppage affecting plaintiff's vessels or otherwise violating, or inducing or causing others to violate, defendant's existing collective bargaining agreement as amended with plaintiff.

MILTON WILLIAMS

(Verified September 16, 1957.)

[Exhibit (Copy of Complaint printed at pp. A 2-A 5) omitted.]

Notice of Cross-Motion to Dismiss Complaint

• • •

[48] Sirs:

Please Take Notice that the undersigned will cross-move this Court, upon return of the order to show cause herein, for an order

1) dismissing the complaint for failure to state a cause of action; or, in the alternative,

2) for an order

(a) Dismissing that part of the action seeking an injunction on the ground that the Court does not have jurisdiction to grant the relief so requested;

(b) Dismissing that part of the action seeking a declaratory judgment on the ground that all the matters and issues involved therein are involved in and fully determinable by proceedings already pending in the Supreme Court of the State of New York, Kings County, and that, in any event, the claim herein for damages obviates the need therefor; and

(c) Staying further proceedings in this case upon the ground that there is an action pending in the Supreme Court of the State of New York, in and for the County of Kings, between the same parties, bearing Index number 9861/1957, for injunctive relief based on the same alleged breach of contract alleged herein, or, in the alternative,

[49] 3) for an order staying all proceedings with respect to all the issues herein on the ground of the pendency of a prior action as hereinabove set forth.

Wherefore, defendant requests this Court to dismiss the complaint herein, or to grant an alternate order as herein-

Notice of Cross-Motion to Dismiss Complaint

above prayed, and for such other, further or different relief as the Court may deem just and proper.

Dated: Brooklyn, New York
September 18, 1957.

Yours, etc.

SEYMOUR W. MILLER
Attorney for Defendant
Office & P. O. Address
26 Court Street
Brooklyn 1, New York

To:

DONOVAN, LEISURE, NEWTON & IRVINE, ESQS.,
Attorneys for Plaintiff
2 Wall Street
New York 5, New York

Affidavit of Seymour W. Miller

• • •

[50] SEYMOUR W. MILLER, being duly sworn, deposes and says:

I am attorney for the Seafarers' International Union of North America, Atlantic and Gulf District, AFL-CIO, the defendant herein, and am personally familiar with the facts hereinbelow set forth. I make this affidavit in support of defendant's request for adjournment of the hearing on plaintiff's application for an order enjoining defendant from a peaceful strike and picketing in support of wage demands on reopening.

This is the third attempt within one month, whereby A. H. Bull Steamship Co. (Bull herein) has sought to enjoin the defendant, Seafarers' International Union, etc (SIU herein) from striking in the course of a labor dispute between the two parties. In each prior instance, Bull brought its applications on by orders to show cause, and in each such instance the SIU answered promptly and with dispatch.

Bull's first application for an injunction was denied by Judge Cone with leave to amend. At the time of the hearing on the second application, it was the plaintiff herein, Bull, which requested additional time of the Court to file a brief. Additional time was granted, and the papers, briefs, are still before Mr. Justice Brown, who has not yet rendered his decision. [51] In other words, while its second application for an injunction against SIU is still pending before the Supreme Court of the State of New York, Bull has applied to this Court for precisely the same relief.

These facts are set out to place plaintiff's position in proper focus, because defendant is forced to request an adjournment of the instant application. Ordinarily, and notwithstanding the paucity of time allowed defendant to defend itself, SIU would, as it has done previously, answer the order to show cause on the date set therefor without

any request for adjournment. However, defendant is presented with the problem of defending additional orders to show cause served upon SIU on Monday morning, Sept. 16, 1957, prior to the Monday afternoon service of this order to show cause. The prior order is in connection with a newly brought action in the Supreme Court of the State of New York, in and for the County of New York, returnable on September 18, 1957, at Special Term, Part III, at 10:00 o'clock in the forenoon. The title of the case is Ameritogs, Inc., et al., v. A. H. Bull, et al., Index #10739—1957.

This fourth order to show cause likewise arises from SIU's strike in furtherance of its labor dispute over wages with Bull. It is brought by certain shippers and seeks, inter alia, to enjoin the SIU from picketing and other actions in connection with its strike. The plaintiffs therein also seek a mandatory injunction to compel Bull to deliver, or make available for delivery, their merchandise.

In view of the foregoing, especially in light of the fact that Bull seeks here, for the third time, relief which has already been denied it by a court of law, and that defendant's attorney will be actually engaged in another matter evolving from the same labor dispute, it is respectfully submitted that it is just and proper that the adjournment herein sought be granted.

THEREFORE, your petitioner respectfully prays that the hearing on the within application be adjourned one week to the next regular scheduled hearing of motions by this Court.

s/ SEYMOUR W. MILLER
Seymour W. Miller

(Verified September 17, 1957.)

Affidavit of Paul Hall

• • •

[52] PAUL HALL, being duly sworn, deposes and says:

1. I am Secretary-Treasurer of the Seafarers International Union of North America, Atlantic and Gulf District, AFL-CIO (hereinafter referred to as "SIU"), defendant herein, and make this affidavit in opposition to the motion of plaintiff for a temporary injunction, and in support of defendant's cross-motion to dismiss the complaint.

2. The office of Secretary-Treasurer of defendant is the chief executive office of the said union. I have occupied that office, as a result of several elections held in the interim, from 1948 to date. Between 1945 to 1947, I was New York Port Agent of the defendant. I have been a member of all of defendant's negotiations committees from about 1945 to date, and have actively participated in all contract and wage negotiations of the defendant from 1945 to date. I am very familiar with union-management relations in general, and in the maritime field in particular.

[53] 3. While counsel will undoubtedly elaborate in briefs and oral argument on this point, I state categorically that Mr. Williams' affidavit, insofar as it relates to the intent or effect of the clauses he sets forth, is not only erroneous in fact, but demonstrably disprovable on its face. I recall the 1947 negotiations, in which the reopening clause was bargained for and obtained. As that clause clearly indicates, it was intended to, and does, permit defendant to reopen for monetary matters at any time. Notwithstanding that, as Mr. Williams agrees, the SIU "insisted" the reopening clause set forth on page 4 of his affidavit, he states that, nevertheless, it was never the intention to permit a strike in support of demands made on such reopening. I can only reply that it is simply not conceivable to me, or, in my opinion, to anyone even remotely connected with collective bargaining, that a union would, in the course of collective bargaining sessions, "insist" on a wage reopen-

ing clause, knowing that the concomitant right to strike, if wage issues and reopening cannot be resolved, does not exist. The right to reopen, without the right to strike, is nothing. A union may, quite obviously, ask its contracted companies to talk at any time. Yet, ridiculous as it seems, Mr. Williams is telling the Court that this union seriously and deliberately "insisted" on and negotiated a clause giving it no more than the right to ask the companies to talk; in other words, it "insisted" on and negotiated something it already had, and which is meaningless if divorced from the right to take economic action to enforce its demands. I say, therefore, that not only was it not the intent to deprive SIU of the right to strike to support reopening demands, but that it is impossible to so construe the contract on any reasonable basis. I find it most difficult to understand how Mr. Williams, whom I have known well for many years, can opine that this union ever bargained for the "right" to engage in unenforcible talk.

Now, on page 4 of Mr. Williams' affidavit, he sets forth the clause which he says makes it clear that the right to reopen did not carry with it the right to strike. For purposes of continuity, we reproduce that clause here:

> [54] "Applications by either party to open negotiations for changes in the wage scale or any monetary matters any time during the life of this agreement shall not be deemed cause for termination of this agreement."

As stated before, I participated in the 1947 negotiations and I know that that clause didn't have the slightest thing to do with strikes. The purpose of that clause was to help both the SIU and the Employers. The former is helped in that, notwithstanding a reopening on monetary matters, and even a resultant impasse, or an ensuing strike, the contract is still not terminated, so that the door is not open for a rival union to walk in, on the premise the Employer

has no collective bargaining agreement at all. The Employer is helped in that, since the contract is not terminated, it is clear that the issues on reopening can only be those concerned with monetary matters. The whole contract may not be thrown open, with all its myriad and important provisions, such as working rules, manning scales, etc. That and that alone, is what was intended to be accomplished by providing for no termination of the agreement upon a reopening.

Mr. Williams refers specifically to the no-strike clause. Let us, however, not take this clause out of context, but, instead, refer to the whole agreement (Exhibit "A" annexed to the complaint). It will then be clear as to what the no-strike clause really refers.

Article II, Section 3 of the agreement reads as follows:

> "For the adjustment of any grievances arising in connection with performance of this agreement which cannot be satisfactorily adjusted on board the vessel there shall be established a Port Committee at the port where articles are terminated. The Port Committee shall consist of 3 representatives from the Union and 3 representatives from the Company, and it shall be the duty of the Port Committee to meet within 24 hours, Saturdays, Sundays and Holidays excluded. In the event the Port Committee cannot agree they shall select an impartial arbitrator whose decision shall be final and binding. In the event the Port Committee cannot agree on the selection of an impartial arbitrator, then a judge of the District Federal Court shall appoint an impartial arbitrator whose decision shall be final and binding. Expenses of the arbitrator shall be paid by the party whom the arbitrator rules against in the decision."

[35] This is the only arbitration clause in the entire agreement, apart from the patently inapplicable provisions,

in Article I, designed to resolve disagreements among the members of the Seafarers Appeals Board, which has jurisdiction over the seniority and shipping rights of individual seamen. There is no other arbitration clause. Article II, Section 3, however, patently refers only to grievances aboard ship, as the plaintiff will undoubtedly concede. It would be downright silly, for example, to think of a Port Committee settling wage review issues. Now, Section 4, immediately following this grievance procedure clause, contains the "no-strike" clause set forth by Mr. Williams at page 2 of his affidavit. Thus, it is apparent that, having provided another method of settling shipboard disputes, the parties immediately thereafter agreed there would be no strikes, lockouts, or stoppages of work. This makes sense. While the Union gives up its right to strike in connection with shipboard "beefs", there is a remedy it can pursue if it feels the seamen have been aggrieved. But, what does the Union have if the Employers refuse to accept demands made on wage reopenings? The answer, once again, according to plaintiff, is that all the reopening clause does or can do is to give us the "right" to ask the companies to please talk to us. Quite bluntly, I have never heard of a more ridiculous construction, not only as a matter of actual fact as to what was intended, but also as a matter of elementary common sense. Anyone who knows the SIU (as Mr. Williams does) knows that it, of all unions, does not have to have contracted permission before it talks to the Employers about increased wages or anything else.

Mr. Williams indicates that his interpretation is proven because the Union never before caused a strike to enforce demands in wage reopenings. The most obvious answer to this is that we have never before reached an impasse on wage reopenings.

[56] I am personally familiar with the reasons for insisting upon an unlimited wage reopening in 1947. It is no secret to anyone familiar with the maritime industry that to this day, and not only in 1947, there was a host of

unions in the maritime field, each comprising either all types of unlicensed seamen, or crafts of unlicensed seamen. For example, there was not only the National Maritime U. on, C. I. O., but also, the Marine Cooks and Stewards, the Sailors Union of the Pacific, the Marine Firemen, Oilers and Watertenders, the Pacific District of the Seafarers International, and others. The contract expiration dates of these unions differed largely and, of course, each union sought to win for its members at least the same, if not better, gains won by others. In order to obviate the need to wait until expiration date to accomplish this, we sought and won the unlimited (as to time) reopening now in the contract. This is pretty much what Mr. Williams says in his affidavit. But, this is procedure. Suppose we do talk at any time. What do we do if the Employers say no? What has the clause given us in such a case, this clause which Mr. Williams says we "insisted on"? The answer, according to Mr. Williams, is that, in effect, we demanded nothing and got nothing. I am sorry, but I don't believe Mr. Williams really means this, even though he is saying it.

It is submitted, then, that this strike, a strike in support of economic demands properly made upon, and rejected by, plaintiff, is clearly within the rights of defendant and in no way a breach of contract.

Mr. Williams says we "singled out" plaintiff. I say he knows we have not signed any wage increase agreement with any of our other contracted companies and that we have established no wage increase pattern with them. What Mr. Williams is attempting to imply is that, because NMU has received a 6% increase, we are under some sort of a duty to accept the same package. Merely to make this statement is to illustrate how ridiculous it is.

[57] Mr. Williams makes various allegations concerning American Coal, and what I said in conversations with him. I must first observe that even Mr. Williams concedes

our right to reopen. Pursuant thereto, we asked for a wage increase. After discussions, Bull refused to accept our final offer. Bull stated that it would pay only the referred to 6% increase. It never—and Mr. Williams knows this, despite what he says—offered to pay 6% and then arbitrate an increase beyond that figure, although I hasten to add that there is no arbitration clause in our agreement covering such matters and that we are thus under no duty whatever to arbitrate, once an impasse over wages has been reached. However, I make this statement only to emphasize Mr. Williams' misstatement. More to the point, I don't see how this Court can validly be placed in the position of putting some sort of ceiling on our demands—in other words, in effect writing a contract for the parties. On the other hand, as counsel will undoubtedly elaborate upon in briefs, if there is something unfair about our bargaining, let plaintiff complain to the NLRB, the agency set up by Congress to decide such matters—although even there, I am informed, the Board is without power to write a contract for the parties.

In my negotiations with Mr. Williams, wherein he alleges I said we have "no beef with the Bull Lines", I vigorously deny any such statements. In fact, Bull Lines points up the special problem faced SIU with a number of its contracted companies. Some of them have already been merged with or bought out by companies having contracts with NMU, to whom we have lost some of our ships. The cloud of insecurity hovering over SIU is even greater with Bull because it is owned, lock, stock, and barrel, ⅓ by coal mine operators, ⅓ by coal-carrying railroads, and ⅓ by the United Mine Workers, headed by Mr. John L. Lewis, the latter union, "our boss", being an avowed labor enemy of SIU, and who deliberately entered into an illegal contract with NMU, the subject of legal proceedings elsewhere. The Mine Workers subsidized the notorious ILA when SIU was spearheading the AFL fight for decency on the New York waterfront. The Mine Workers, particu-

larly its District 50, headed by Mr. Lewis' brother, Denny, [58] was recently defeated in a contest with us over the harbor tugs in Baltimore. It is sworn to destroy us and, as it can be seen, the other stockholders who own Bull are dependent on the Mine Workers for their profits. In truth, then, our worst labor enemy is our boss in Bull. How. then, do we take care of this? How long will we keep our ships? How soon will they be transferred? How is this insecurity to be measured? Is the Court to do the measuring? Or is it to be the seamen themselves, the ones whose interests are threatened? We hold it is the latter who, in their considered judgment, have made certain wage demands upon Bull. The insecurity of our position, vis-a-vis Bull, is indeed occasioned by its ownership. But, let me emphasize this clearly, our dispute here is with Bull, and with Bull alone. At no time, directly or indirectly, did I make demands upon Bull other then wage demands. I made it crystal clear that, in our judgment, the cloud of insecurity over our heads is responsible for our demands, seriously and painstakingly considered by our people. Our dispute with American Coal proper is elsewhere, in the Courts and with the Board. Here, then, there is only one dispute—a wage dispute, on reopening, with Bull Lines—nothing more, nothing less. Our wage demands upon Bull are predicated on our insecurity with Bull—nothing more, nothing less. Our members seek compensation therefor and have set their wage demands accordingly—nothing more, nothing less. Having reached an impasse, we set out on a peaceful economic strike. Can this Court validly deprive us of this right? Should this Court deprive us of this right? We answer, in all respect, no. Plaintiff may attempt to muddy the waters—indeed, as counsel informs me, the same arguments were advanced, in open Court, by counsel in two previous State court proceedings to no avail, so far. Plaintiff cannot, should not, be allowed to go "across the street" and obtain a different result.

Affidavit of Paul Hall

[59] I have read the accompanying affidavit of Claude Simmons and, of my own personal knowledge, I affirm the truth thereof and adopt and reiterate the same, as if actually made a part hereof.

WHEREFORE, it is prayed that the motion for a temporary injunction herein be denied and the cross-motion to dismiss the complaint herein be granted.

.....

PAUL HALL

(Verified September 18, 1957.)

Affidavit of Claude Simmons

• • •

[60] CLAUDE SIMMONS, being duly sworn, deposes and says:

I am Assistant Secretary-Treasurer of the defendant union herein (hereinafter referred to as SIU) and make this affidavit in opposition to plaintiff's motion for a temporary injunction, and in support of defendant union's cross-motion to dismiss the complaint.

I have been Assistant Secretary-Treasurer of the SIU since January, 1952, having been duly returned to office during the interim as a result of several elections. While I have participated in some negotiations with our contracted Employers (including plaintiff) prior to that time, I have been a member of the SIU's negotiating committee in every negotiating session since January, 1952. It is also a part of my official duties to "police" and effectuate the enforcement of each and every collective bargaining agreement to which the SIU is a party. I discuss our contract with Employers each and every working day. I have been an active member of the SIU since its inception, about 19 years ago, and I am well acquainted with the history of maritime trade unionism since 1938, particularly with respect to collective bargaining issues and developments since that time. In the light of this background, I can say that, to my own personal knowledge, it has never been questioned by anybody that [61] our collective bargaining agreement did not prohibit a strike on wage reopening, nor has it ever been suggested to me by anybody that the intent of the clause was merely to give us a right to talk. It is not credible to me how anyone in the maritime industry can believe that.

Pursuant to our collective bargaining agreement (Exhibit "A", annexed to the complaint), and in accordance with my usual procedure in notifying our contracted Em-

ployers that we desire to reopen on monetary matters, I dispatched, on June 17, 1957, the following telegram to plaintiff:

> "Pursuant to our collective bargaining agreement between your company and the Seafarers International Union of North America, Atlantic and Gulf District, we hereby notify you that we wish to open negotiations for a revision of wages and other monetary matters. We request that you meet with us on Monday, June 24th, at 2:00 P. M. in the offices of the Seafarers Welfare Plan, Room-1060, 11 Broadway, New York, N. Y."

Subsequently, the Union's negotiators met with the negotiators of plaintiff, but no agreement was reached. On August 15, 1957, I caused to be sent, to plaintiff, the Union's final offer, after being advised by Paul Hall, the SIU Secretary-Treasurer, that he had communicated this offer to Mr. Williams over the phone. The offer set forth our final and minimum monetary demands with respect to overtime pay and wage increases. On August 16, 1957, the plaintiff wired the SIU, in answer to the SIU's final offer, to the effect, inter alia, that it was ready to offer an increase less than that which was submitted by SIU as the minimum it would accept. On August 19, 1957, SIU entered into the strike upon which the present action is predicated.

I am in charge of the picketing which is currently taking place at the entrance to plaintiff's piers, where its ships are tied up, in Brooklyn. There are two entrances, one on 20th Street, and one on 21st Street. We commenced our picketing with about 4 pickets at each entrance. But, after the first day, I reduced the number of pickets, so that there is now only one [62] picket at each entrance. A picket captain looks after the needs of the pickets, and I check the lines several times each day and night. The pickets have been directed to avoid violence in any way, shape or form.

These directions have been carried out to the letter. There are policemen around, but they haven't done anything, nor do I know who called them or why they are there. There have been no incidents of any kind, no violence of any kind, no disorder, no mass picketing, no foul language (indeed, hardly any language at all). The picket signs state merely that the SIU is on strike against A. H. Bull S. S. Company for better pay. Completely analogous conditions prevail in Puerto Rico. In other words, this is an entirely peaceful, orderly, primary strike occasioned by the failure of the parties to resolve economic demands made pursuant to contract. As before indicated, this strike is not in breach of contract and was contemplated by the parties in granting the SIU's demands for the wage reopening clause hereinbefore set forth.

WHEREFORE, it is prayed that the motion for a temporary injunction be denied and the cross-motion to dismiss the complaint be granted.

s/ CLAUDE SIMMONS

(Verified September 18, 1957.)

Affidavit of Seymour W. Miller

[63] SEYMOUR W. MILLER, being duly sworn, deposes and says:

I am the attorney for the defendant herein. I make this affidavit in opposition to plaintiff's motion for a temporary injunction and in support of defendant's cross-motion to dismiss the complaint.

On August 27, 1957, plaintiff herein instituted proceedings by order to show cause, dated August 23, 1957, the affidavit of Milton Williams, sworn to August 22, 1957, and a complaint, verified by the said Williams August 22, 1957. The action was brought in the Supreme Court of the State of New York, County of Kings (Index #9861/57), and the proceedings were directed towards the issuance of a temporary and permanent injunction against defendant's strike and picketing of plaintiff's vessels. It was alleged that the strike and picketing were in breach of contract and did not constitute a labor dispute within the meaning of New York's little Norris-LaGuardia Act (Sec. 876-a of the Civil Practice Act). Except that no demand for a declaratory judgment or damages was made, the issues there were precisely the same as in this case. The Court, per Mr. Justice Cone, sitting in Special Term, Part I, denied the motion for a temporary injunction and dismissed the complaint, a decision predicated on the coverage of the case by New York's little Norris-LaGuardia Act. The said affidavit of Mr. Williams, the said complaint, and the said decision, are annexed hereto, made a part hereof, and labeled "Exhibit A", "Exhibit B", and "Exhibit C", respectively.

[64] On September 9, 1957, plaintiff, again by order to show cause, brought on a new application, in the same Part of the same Court, for the relief previously denied. In support thereof, it filed an amended complaint, verified by Mr. Williams on the 4th day of September, 1957, in addition to a new affidavit by Mr. Williams, sworn to September 3rd,

1957. The said new affidavit of Mr. Williams, and the said amended complaint, verified by Mr. Williams, are annexed hereto, made a part hereof, and labeled "Exhibit D" and "Exhibit E", respectively. This second application was pending at the time this proceeding was instituted, and is still pending.

I was present in Court on August 29, 1957, and on September 9, 1957, the days on which oral argument was had on the aforesaid two orders to show cause. In fact, I argued the motions on behalf of the defendant herein. Mr. Cherbonnier, of Satterlee, Browne & Cherbonnier, argued for the plaintiff herein. The papers presented, as can be seen from the exhibits, and his oral arguments, consisted of, for all practical purposes, precisely what is now before this Court, and were disposed of as indicated in the aforesaid decision, while a decision on the second application is still forthcoming. All that is new here is the demand for declaratory relief and damages.

SEYMOUR W. MILLER

(Verified September 18, 1957.)

[65]

EXHIBIT "A"

STATE OF NEW YORK }
COUNTY OF NEW YORK }

MILTON WILLIAMS being duly sworn deposes and says:

I am Vice-President in Charge of Operations of A. H. Bull & Co., Inc. I have represented our steamship lines in labor negotiations since 1936 with the exception of 4½ years spent in the service from 1941 to 1946.

Negotiations with the Seafarers' International Union of North America, which I shall hereafter refer to as SIU, and its predecessors have always been carried on by an informal negotiating group representing the majority of companies having contracts with the SIU.

Upon completion of the negotiations the contracts were signed by the individual companies and the Union.

I have been a member of the Negotiating Committee since 1946. The Negotiating Committee varied in size, increasing as the years went by and additional companies desired representation on the Negotiating Committee until it reached a point where the Committee usually consisted of five or six representatives.

As of 1946, when I took my position on the Negotiating Committee, the uniform contracts between the SIU and the companies whose employees were represented by the Union contained the following "no strike" provision:

> "There shall be no strikes, lockouts, or stoppage of work while the provisions of this agreement are in effect."

The agreement as of that date did not provide for any reopening on monetary matters during its term; however, during negotiations leading up to the execution of the 1947 agreement between the SIU and the companies which it had

under contract, the Union pointed out that other maritime unions representing unlicensed personnel had contracts with companies whose employees [66] were represented by those unions whose contracts expired at various dates prior to the expiration date of the SIU agreement. Due to this fact increases negotiated by these other unions, which are directly competitive with the SIU, regularly became effective prior to the increases or other contract modifications negotiated by the SIU. The SIU demanded that its standard agreement be amended to include a wage reopening provision which would permit it to follow whatever industry pattern was set by the other unions in their negotiations without waiting for the expiration date of the SIU contract. This demand was agreed to by the companies under contract to the SIU and the language reflecting that agreement is now contained in the preamble to the standard agreement between those companies and the Union.

As one who personally participated in the negotiations with the SIU which led to this contract modification I can say that it was never the intention of the companies represented by the Negotiating Committee to modify in any way the "no strike" clause so as to permit a strike in support of the newly adopted wage reopening clause. In other words, it was the intention of the companies to permit the contract to be reopened on wages so that the SIU would not lag behind other maritime unions representing unlicensed personnel in securing monetary increases for the employees represented by the SIU but without in any way qualifying the absolute prohibition against strike already included in previous agreements between the companies and the SIU and which has been carried forward to the present day without any modification. So that this would be clearly understood the Union agreed to incorporate in the reopening clause the following:

> "Applications by either party to open negotiations for changes in the wage scale or any monetary mat-

ters any time during the life of this agreement shall not be deemed cause for termination of this agreement."

[67] That this is the correct interpretation of these contract clauses as evidenced by the fact that at no time since adoption of the wage reopening clause has the Union caused a strike or work stoppage against any of the dry cargo carriers who have signed the same agreement to enforce any demands made by the Union under the wage reopening clause.

Submitted with this affidavit is a copy of the complaint which I have verified on behalf of the plaintiff in this action and which I incorporate by this reference in this affidavit. As will be seen from the complaint the individual defendants herein and the defendant Union have caused through picketing and other means a total work stoppage aboard plaintiff's vessels, the SS FRANCES and the SS KATHRYN, presently at plaintiff's Brooklyn pier. This work stoppage clearly violates the "no strike" clause of the present collective bargaining agreement between plaintiff and defendant Union.

This unlawful strike has already caused plaintiff great and irreparable injury through the tie-up of these two vessels with a consequent loss of substantial freight business to plaintiff's competitors. Unless this unlawful strike is promptly enjoined, plaintiff will continue to suffer great and irreparable injury for which no adequate legal remedy exists.

In addition to the damage caused plaintiff by virtue of the present delay in the movements of the SS FRANCES and the SS KATHRYN plaintiff has other vessels, which, in the next few days, are scheduled to arrive in New York and whose operations would necessarily be affected unless defendants are enjoined.

Exhibit "A"

Plaintiff has no adequate legal remedy because the damage done to plaintiff's position in the shipping industry and to its good will amongst its customers is incalculable in monetary terms.

Plaintiff asks to proceed by an Order to Show Cause because the damage presently being suffered by the continuing acts and activities of the defendants herein necessitating a prompt hearing and disposition of its application for an injunction *pendente lite*.

[68] No previous application has been made for the relief sought herein to any Court of Justice thereof.

WHEREFORE I respectfully submit that an injunction *pendente lite* substantially in the form set forth in the Order to Show Cause submitted herewith should issue forthwith.

s/ MILTON WILLIAMS

(Verified August 22, 1957.)

[69]

EXHIBIT "B"

COMPLAINT FOR INJUNCTIVE RELIEF

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF KINGS

A. H. BULL STEAMSHIP COMPANY,
Plaintiff,

against

PAUL HALL, as Secretary-Treasurer, and CLAUD SIMMONS, EDWARD MOONEY and JOSEPH ALGINA each as Assistant Secretary-Treasurer of the SEAFARERS' INTERNATIONAL UNION OF NORTH AMERICA, AFL-CIO, and

SEAFARERS' INTERNATIONAL UNION OF NORTH AMERICA, a labor organization affiliated with the American Federation of Labor and Congress of Industrial Organizations,
Defendants.

Plaintiff, A. H. BULL STEAMSHIP COMPANY, by SATTERLEE, BROWNE & CHERBONNIER, its attorneys, alleges upon information and belief as follows:

1. Plaintiff is and at all times hereinafter mentioned was a corporation organized and existing under the laws of the State of Delaware and is engaged in and carrying on a business affecting commerce, to wit, that of a common carrier by water in foreign and intercoastal trade with its principal office at 115 Broad Street, New York, New York and within the jurisdiction of this Court.

2. The defendants PAUL HALL, as Secretary-Treasurer and CLAUD SIMMONS, EDWARD MOONEY and JOSEPH ALGINA, each as Assistant Secretary-Treasurer (hereinafter called individual defendants) are citizens of the State of New York and defendant, SEAFARERS' INTERNATIONAL UNION OF NORTH AMERICA, AFL-CIO (hereinafter called Union) is and at all times hereinafter mentioned was and at the time of the filing of this complaint is a voluntary unincorporated association, to wit, a labor organ zation with its principal office located at 675 Fourth Avenue, Brooklyn, New York and is subject to the jurisdiction of this Court.

[70] 3. On or about October 3, 1956 plaintiff and the Union duly entered into and signed a written Amendment to a collective bargaining agreement then existing between them covering certain classifications of employees of plaintiff, to wit, the unlicensed personnel aboard the American flag ocean going dry cargo vessels operated by plaintiff. The said Amendment, among other things, extended the said collective bargaining agreement to September 30, 1958.

4. A duly signed collective bargaining agreement between the plaintiff and the Union is now, and at all times herein mentioned was, in full force and effect, a copy of which, as prepared by the Union, is hereto attached and made a part hereof and marked Exhibit A, the said collective bargaining agreement contains, among other provisions, the following:

ARTICLE II

General Rules

"Section 4. Stoppage of Work. There shall be no strikes, lockouts, or stoppages of work while the provisions of this agreement are in effect."

5. On August 19, 1957 the SS FRANCES, owned and operated by the plaintiff, arrived in the Port of New York and at about 3:00 p.m. on said date the defendant Union and the individual defendants without warning to plaintiff caused

the SS FRANCIS and the property of the plaintiff to be picketed and the vessel is now being picketed.

6. On August 20, 1957, the SS KATHRYN, owned and operated by the plaintiff, arrived in the Port of New York and immediately upon arrival the defendant Union and the individual defendants caused the said vessel to be picketed and the vessel is now being picketed.

7. The said picketing of the SS FRANCES and the SS KATHRYN, which vessels have large quantities of perishables aboard, prevented their cargoes from being unloaded and compelled plaintiff to cancel their sailings from New York of those two vessels which were due to depart on August 22 and August 23 respectively.

[71] 8. The said picketing has caused a total work stoppage and is in violation of the written collective bargaining agreement which defendant Union has with plaintiff and is not the result of a labor dispute as that term is defined by Section 876-a of the Civil Practice Act of New York.

9. Plaintiff is in full compliance with all the terms of its collective bargaining agreement with the defendant Union and plaintiff has not refused to comply with any of the terms of said agreement.

10. The action taken by defendants in causing the SS FRANCES and the SS KATHRYN to be picketed has caused and is causing plaintiff serious loss, damage and irreparable injury for which plaintiff has no adequate remedy at law, in that plaintiff has lost, and will continue to lose, the business of its regular customers who, but for the aforesaid picketing, would be engaging plaintiff's vessels for the transportation of cargoes and that, if said picketing is not immediately restrained, perishable commodities presently aboard the said vessels will be destroyed.

WHEREFORE plaintiff respectfully prays that this Court issue an appropriate Order temporarily and permanently restraining and enjoining the individual defendants and

the defendant Union and all of its officers, representatives, agents, servants, employees, attorneys and all members or persons acting on concert or participation with it, (a) from breaching or otherwise violating the present collective bargaining agreement between plaintiff and defendant Union, and (b) from engaging in or inciting any strike or work stoppage, or, by picketing or by issuing, directly or indirectly, any orders, directions, instructions, appeals or by any like or related acts or conduct or by permitting any such to remain in existence or effect, otherwise preventing or interfering in any way with the discharging, loading, moving or operating of the SS FRANCES, the SS KATHRYN or any other vessel owned or [72] operated by the plaintiff, A. H. BULL STEAMSHIP COMPANY, so long as the present collective bargaining agreement between the parties remains in effect, and for such other and further and different relief as in the premises may be deemed necessary, adequate and proper.

SATTERLEE, BROWNE & CHEIBONNIER
Attorneys for Plaintiff
Office & P. O. Address
30 Broad Street
New York 4, New York

(Verified August 22, 1957.)

[74]

EXHIBIT "A" TO EXHIBIT "B"

COPY OF FREIGHTSHIP AGREEMENT BETWEEN SEAFARERS' INTERNATIONAL UNION OF NORTH AMERICA, ATLANTIC AND GULF DISTRICT, AFL-CIO, AND ITS CONTRACTED COMPANIES, INCLUDING A. H. BULL STEAMSHIP CO.

(Omitted; see page A 6.)

EXHIBIT "C"

[75] The New York Law Journal, Thursday, September 5, 1957, Page 9, Col. 8.

Supreme Court, Kings County, Special Term, Part I

• • •

By Mr. Justice John E. Cone

A. H. Bull Stemship Co. *v.* Hall—Plaintiff moves for an injunction pendente lite enjoining the defendants from picketing its place of business or from interfering with the discharging, loading, moving or otherwise operating its vessels. Defendants cross-move to dismiss the complaint on the grounds it fails to state facts sufficient to constitute a cause of action and that the court lacks jurisdiction of the subject matter.

The facts briefly reveal that the parties entered into an employment contract effective October 15, 1956, and expiring September 30, 1958. The contract contains a reopening and renegotiation clause relative to wages and other monetary matters. This clause in the preamble of the contract reads as follows: "Application by either party to open negotiations for changes in the wage scale or any monetary matters any time during the life of this agreement shall not be deeemd cause of termination of this agreement." Article II, section 4, further provides that there shall be no strikes, lockouts or stoppages of work while the provisions of this agreement [75] are in effect. Predicated upon the reopening clause, notice was duly served upon plaintiff seeking a renegotiation of wages and other monetary matters. After a series of conferences, the parties reached a deadlock resulting in the picketing of plaintiff's place of business.

It is plaintiff's contention that the right of renegotiation and the failure to reach an amicable adjustment of

wages, &c., did not carry with it the concomitant right to strike in support thereof but rather that the defendants were relegated to section 3, Article II, of the contract relative to the arbitration of grievances arising in connection with the performance of the agreement. That inasmuch as plaintiff is seeking to enforce the provisions of the agreement between the parties, section 876-a of the Civil Practice Act is not applicable. With this contention the court does not agree. A labor dispute does not lose its characterization as such merely because it occurs in violation of an agreement and if there is a bona fide labor dispute between the parties, the plaintiff may not avoid the requirements of section 876-a merely by showing the violation of an agreement by defendants (Bert Mfg. Co. *v.* Local 810, &c., 136 Supp., 2d 805).

Section 876-a, subdivision 10-c, in defining the term "labor" dispute reads as follows:

> "The term 'labor dispute' includes any controversy concerning terms or conditions of employment or concerning the association or [75] representation of persons in negotiating, fixing, maintaining changing or seeking to arrange terms or conditions of employment, or concerning employment relations . . ."

It is needless to say that an impasse in wage negotiations between an employer and the union bargaining in behalf of its employees constitutes a "controversy concerning terms or conditions of employment" within the meaning of the above-quoted subsection (Vim Electric Co. *v.* Solomon, 67 N. Y. S. 2d. 908). It would appear that in this state the weight of authority supports the proposition that a breach of a collective bargaining agreement constitutes a controversy concerning terms and conditions of employment and is a labor dispute within the meaning of section

Exhibit "C"

876-a (Di Deri et al. *v.* Gene Louis Inc., 261 App. Div., 920, aff'd 288 N. Y. 592 (with modifications not here material); Scafidi *v.* Debnar, 22 N. Y. S., 2d 390; Green Bus Lines, Inc., *v.* Flynn, 61 N. Y. S., 2d 663).

While the court is clearly sympathetic to those employees not parties to the dispute who are unable to earn their livelihood because of the dispute, it finds that plaintiff is not entitled to the relief sought herein since it must comply with section 876-a, subdivisions 1 and 4.

Accordingly, the motion for an injunction pendente lite is denied, without prejudice to a renewal thereof if [75] plaintiff is so advised upon the service of an amended complaint. In view of this disposition, the court grants the motion to dismiss with leave to serve an amended complaint.

A. H. Bull Steamship Co. *v.* Atkins—The motion herein is a companion to the motion by the plaintiff in its action against the Seafarers International Union of North America decided herewith. The motions seeks similar relief upon facts almost identical. The reasons set forth in the disposition of the seafarers' case are applicable herein and, accordingly, similar disposition is made herein. Settle order on notice.

EXHIBIT "D"

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

MILTON WILLIAMS being duly sworn deposes and says:

I am Vice-President in Charge of Operations of A. H. Bull & Co., Inc. I have represented our steamship lines in labor negotiations since 1936 with the exception of 4½ years spent in the service from 1941 to 1946.

Negotiations with the Seafarers' International Union of North America, which I shall hereafter refer to as SIU, and its predecessors have always been carried on by an informal negotiating group representing the majority of companies having contracts with the SIU.

Upon completion of the negotiations the contracts were signed by the individual companies and the Union.

I have been a member of the Negotiating Committee since 1946. The Negotiating Committee varied in size, increasing as the years went by and additional companies desired representation on the Negotiating Committee until it reached a point where the Committee usually consisted of five or six representatives.

As of 1946, when I took my position on the Negotiating Committee, the uniform contracts between the SIU and the Companies whose employees were representd by that Union contained the following "no strike" provision:

> "There shall be no strikes, lockouts, or stoppage of work while the provisions of this agreement are in effect."

The agreement as of that date did not provide for any reopening on monetary matters during its term, however,

Exhibit "D"

during negotiations leading up to the execution of the 1947 agreement between the SIU and the companies which it had under contract, the Union pointed out that other maritime unions representing unlicensed personnel had contracts with companies whose [77] employees were represented by those unions whose contracts expired at various dates prior to the expiration date of the SIU agreement. Due to this fact increases negotiated by these other unions, which are directly competitive with the SIU, regularly became effective prior to the increases or other contract modifications negotiated by the SIU. The SIU demanded that its standard agreement, to which plaintiff was and is a party, be amended to include a wage reopening provision which would permit it to follow whatever industry wage pattern was set by the other maritime unions in their negotiations without waiting for the expiration date of the SIU contract. This demand was agreed to by the companies under contract to the SIU and after considerable discussion the language reflecting the agreement finally reached is now contained in the preamble to the standard agreement between those companies, including the plaintiff, and the Union which is as follows:

> "Application by either party to open negotiations for changes in the wage scale or any monetary matters any time during the life of this agreement shall not be deemed cause for termination of this agreement."

As one who personally participated in the said negotiations with the SIU which lead to this contract modification, which has been in each collective bargaining agreement since that date and is now in the present collective bargaining agreement, I know that the above quoted provision of the contract was dealt with and considered as applying equally to the companies as well as the Union.

Exhibit "D"

At the time the above quoted provision was negotiated the future of the American Merchant Marine seemed uncertain and the negotiators for the Union made it clear that if economic conditions turn downward and the companies requested a wage reduction which the Union would not agree to, such application by the companies to reduce wages would not nullify the "no strike-no lockout" clause. In like manner it was understood and agreed that if the companies refused a Union demand for an increase in wages or other monetary [78] matters such refusal would likewise not nullify the "no strike-no lockout" clause of the contract.

Since the companies or the Union could open negotiations for changes in the wage scale or any monetary matter at any time and as many times as they wished during the life of the agreement, the negotiators agreed that the "no strike-no lockout" clause was not to be nullified because of an application by either party and to this and it was agreed and inserted in the wage reopening clause that such applications "shall not be deemed cause for termination of this agreement". This clause was put in to prevent either the companies or the Union from taking economic action to enforce a wage change during the life of the agreement which was not voluntarily agreed to by the other side. Both the companies and the Union contracted away their right to take economic action during the life of the agreement because it was the general understanding that if there was any general changes in monetary matters in the shipping industry as a whole, and either side requested the incorporation of such change in the contract, it would be economically unwise for the companies or the Union to refuse to accept and agree to such changes because in the event of an arbitration all parties recognized that an arbitrator would unquestionably award any prior determined wage pattern in the industry.

That this is the correct interpretation of these contract clauses is evidenced by the fact that at no time since adop-

Exhibit "D"

tion of the wage reopening clause in 1947 has the Union caused a strike or work stoppage to enforce any demands made by the Union under the wage reopening clause against any of the dry cargo carriers, including plaintiff. It was not until plaintiff refused the defendants' exorbitant, unjust and discriminatory demands that the defendants for the first time claimed that a strike to enforce these demands was not a violation of the "no strike no lockout" clause. This contention by the defendants is in effect a claim that a refusal by one of the parties to meet a wage demand of the other under the reopening clause terminates the agreement.

[79] Submitted with this affidavit is a copy of the amended complaint which I have verified on behalf of the plaintiff in this action and which I incorporate by this reference in this affidavit. As will be seen from the amended complaint the individual defendants herein and the defendant Union have caused through picketing and other means stoppages of work aboard four of plaintiff's vessels presently at plaintiff's Brooklyn piers. These work stoppages clearly violate the "no strike" clause of the present collective bargaining agreement between plaintiff and defendant Union.

This unlawful strike has already caused plaintiff great and irreparable injury through the tie-up of four vessels with a consequent loss of substantial freight business to plaintiff's competitors. Unless this unlawful strike is promptly enjoined, plaintiff will continue to suffer great and irreparable injury for which no adequate legal remedy exists.

In addition to the damage caused plaintiff by virtue of the present delay in the movements of the SS FRANCES, the SS KATHRYN, the SS BEATRICE and the SS ELIZABETH plaintiff has other vessels whose operations could be affected unless defendants are enjoined.

Exhibit "D"

Plaintiff has no adequate legal remedy because the damage done to plaintiff's position in the shipping industry and to its good will amongst its customers is incalculable in monetary terms.

Plaintiff asks to proceed by an Order to Show Cause because the damage presently being suffered by the continuing acts and activities of the defendants herein necessitating a prompt hearing and disposition of its application for an injunction *pendente lite*.

Application for similar relief was made in the original complaint which was denied with leave to file an amended complaint and this amended complaint is in compliance with the Order dated September 3, 1957 of Justice John E. Cone of this Court.

[80] WHEREFORE I respectfully submit that an injunction *pendente lite* substantially in the form set forth in the Order to Show Cause submitted herewith should issue forthwith.

/s/ MILTON WILLIAMS

(Verified September 3, 1957.)

EXHIBIT "E"

Amended Complaint For Injunctive Relief

* * * *

[81] Plaintiff, A. H. Bull Steamship Company, by Satterlee, Browne & Cherbonnier, its attorneys, alleges upon information and belief as follows:

1. Plaintiff is and at all times hereinafter mentioned was a corporation organized and existing under the laws of the State of Delaware and is engaged in and carrying on a business affecting commerce, to wit, that of a common carrier by water in foreign and intercoastal trade with its principal office at 115 Broad Street, New York, New York and within the jurisdiction of this Court.

2. The defendants Paul Hall, as Secretary-Treasurer and Claud Simmons, Edward Mooney and Joseph Algina, each as Assistant Secretary-Treasurer (hereinafter called individual defendants) are citizens of the State of New York and defendant, Seafarers' International Union of North America, AFL-CIO (hereinafter called Union) is and at all times hereinafter mentioned was and at the time of the filing of this amended complaint is a voluntary unincorporated association, to wit, a labor organization with its principal office located at 675 Fourth Avenue, Brooklyn, New York and is [82] subject to the jurisdiction of this Court.

3. On or about October 3, 1956 plaintiff and the Union duly entered into and signed a written Amendment to a collective bargaining agreement then existing between them covering certain classifications of employees of plaintiff, to wit, the unlicensed personnel aboard the American flag ocean going dry cargo vessels operated by plaintiff. The said Amendment, among other things, extended the said collective bargaining agreement to September 30, 1958.

4. A duly signed collective bargaining agreement between the plaintiff and the Union is now, and at all times herein mentioned was, in full force and effect, a copy of

which, as prepared by the Union, was attached to the original complaint and marked Exhibit A and is incorporated herein by reference and made a part hereof, the said collective bargaining agreement contains, among other provisions, the following:

ARTICLE II

General Rule

"Section 4. Stoppage of Work. There shall be no strikes, lockouts, or stoppages of work while the provisions of this agreement are in effect."

5. The said collective bargaining agreement also contains a provision as follows:

"* * * Applications by either party to open negotiations for changes in the wage scale or any monetary matters any time during the life of this agreement shall not be deemed cause for termination of this agreement. Monetary matters for the purpose of this Section shall be the following: Wages, Overtime, Standby Rate, Longshore Rate, Tank Cleaning Rate, Explosives Handling Rate, Extra Meals Rate, Subsistence Rate and Room Allowance."

6. On or about June 17, 1957 plaintiff received a telegram from the Union, signed by the defendant, PAUL HALL, by which application was made to open negotiations for a revision of wages and other monetary matters in the existing collective bargaining agreement between the plaintiff and the Union. A similar telegram was sent by the Union to all other dry cargo operators on the Atlantic and Gulf Coast.

[83] 7. The said telegram sent by the Union on or about June 17, 1957 to the dry cargo vessel operators on the Atlantic and Gulf Coast having collective bargaining agree-

Exhibit "E"

nents with the Union, including the telegram sent to the plaintiff, requested a meeting "on Monday June 24 at 2 PM in the offices of the Seafarers Welfare Plan Room 1060 11 Broadway New York, New York".

8. Subsequent to the meeting on Monday, June 24, 1957, plaintiff, in accordance with its long established practice, offered to sign a wage amendment to its existing collective bargaining agreement with the Union which would grant to the unlicensed personnel serving aboard the American flag dry cargo vessels operated by the Company the same increase in wages with the same effective date as granted by other dry cargo vessel operators having collective bargaining agreements with the Union.

9. The Union by its Secretary-Treasurer, the defendant PAUL HALL, demanded of plaintiff substantially more than the wage pattern increase for dry cargo vessels operated on the Atlantic and Gulf Coast and gave as a reason for such exorbitant demands conditions over which plaintiff has no control.

10. The Union reduced its demands to writing and delivered them to plaintiff at about 4:30 P. M. on August 15, 1957, to which plaintiff immediately replied by telegram as follows:

> "IN REPLY TO YOUR COMMUNICATION DATED AUGUST 12 1957 ENTITLED SIU FINAL OFFER TO BULL LINE, WHICH WAS DELIVERED TO US BY HAND ABOUT 4:30 PM AUGUST 15, THERE IS NO JUSTIFICATION FOR YOUR DEMAND THAT BULL LINE PAY ITS UNLICENSED SEAMEN SUBSTANTIALLY MORE THAN IS PAID BY OTHER DRY CARGO OPERATORS ON THE EAST COAST STOP IN OUR NEGOTIATIONS YOU HAVE TALKED ABOUT JOB SECURITY FOR BULL LINE SEAGOING PERSONNEL STOP CERTAINLY ANYONE FAMILIAR WITH THE MARITIME INDUSTRY KNOWS THAT UNDER THE COMPETITIVE CONDITIONS IN THE INDUSTRY IT WOULD BE

Exhibit "E"

SUICIDE FOR A COMPANY AND A COMPLETE LOSS OF JOB SECURITY FOR ITS SEAMEN IF A COMPANY AGREED TO YOUR DEMANDS STOP A WORK STOPPAGE WOULD BREACH YOUR COLLECTIVE BARGAINING AGREEMENT WITH US WHICH DOES NOT EXPIRE UNTIL SEPTEMBER 30, 1958 AND WHICH WE ARE PREPARED [84] TO LIVE UP TO IN ALL RESPECTS STOP WE HAVE BEEN AND ARE PREPARED AND WILLING TO SIGN AN AGREEMENT WITH YOU GRANTING OUR SEAMEN THE SAME WAGE PATTERN INCREASE GRANTED TO THE EAST COAST DRY CARGO INDUSTRY WITH THE SAME EFFECTIVE DATE AS THAT OF OTHER SIU DRY CARGO OPERATORS STOP * * *"

11. Plaintiff received no reply to its aforesaid telegram of August 15, 1957 but, after the SS FRANCES, owned and operated by plaintiff, arrived in the port of New York and at about 3:00 PM on August 19, 1957 the defendant Union and the individual defendants, without warning to plaintiff, caused the SS FRANCES and the property of the plaintiff to be picketed and the vessel is now being picketed and the plaintiff is unable to discharge the SS FRANCES.

12. Thereafter, and on or about August 20, 1957, the SS KATHRYN, owned and operated by plaintiff, arrived in the port of New York and the defendant Union and the individual defendants caused the said vessel to be picketed and the vessel is now being picketed and plaintiff is unable to discharge the said SS KATHRYN.

13. Thereafter, the SS BEATRICE and the SS ELIZABETH, owned and operated by plaintiff arrived respectively in plaintiff's terminal in Brooklyn, New York on August 26, 1957 and August 27, 1957, and upon arrival the defendant Union and the individual defendants caused the said vessels to be picketed and the vessels are now being picketed.

14. The said picketing of the SS FRANCES and the SS KATHRYN, which vessels have large quantities of perishables

aboard, prevented their cargoes from being unloaded and compelled plaintiff to cancel their sailings from New York of those two vessels which were due to depart on August 22 and August 23 respectively.

15. The said picketing of the SS BEATRICE and the SS ELIZABETH has compelled plaintiff to cancel their sailings from New York, causing plaintiff undue hardship and irreparable loss and damages.

16. The said picketing is not the result of a labor dispute as that term is defined in the Labor Management Relations Act of 1947, as Amended, [85] but is in violation of a valid collective bargaining agreement existing between the plaintiff and the defendant Union.

17. The said picketing is a strike or stoppage of work and is in violation of the written collective bargaining agreement which defendant Union has with plaintiff and is not the result of a labor dispute as that term is defined by Section 876-a of the Civil Practice Act of the State of New York.

18. Plaintiff is in full compliance with all the terms of its collective bargaining agreement with the defendant Union and plaintiff has not refused to comply with any of the terms of said agreement.

19. The defendants have no legal right to cause stoppages of work by picketing plaintiff's property or its vessels in violation of Article II, Section 4, of the valid existing collective bargaining agreement between plaintiff and defendant Union.

20. The action taken by defendants in causing the property and vessels of the plaintiff to be picketed has caused and is causing plaintiff serious loss, damage and irreparable injury, for which plaintiff has no adequate remedy at law in that plaintiff has lost and will continue to lose the business

of its regular customers who, but for the aforesaid picketing, would be engaging plaintiff's vessels for the transportation of cargoes and that if said picketing is not immediately restrained perishable commodities presently aboard the SS FRANCES and the SS KATHRYN will be destroyed.

21. Delay in granting the coercive relief herein prayed for would result:

(a) In the continued and continuing repetition of the unlawful act of picketing with no proper justification.

(b) In the continued and continuing irreparable loss and damage to plaintiff as well as to its tangible and intangible property.

[86] (c) In the continued and continuing repetition of the unlawful acts herein described against which plaintiff has no adequate remedy at law.

(d) In greater injury to plaintiff than will be inflicted upon defendants by the granting of relief sought.

(e) In the continued and continuing irreparable loss and damage to plaintiff as well as to its tangible and intangible property against the loss and damage to which the public officials charged with the duty to protect plaintiff's property would be unable to furnish adequate protection in that the acts of defendants have not been riotous, disorderly or outwardly destructive.

WHEREFORE, plaintiff respectfully prays that this Court issue an appropriate Order temporarily and permanently restraining and enjoining the individual defendants and the defendant Union and all of its officers, representatives, agents, servants, employees, attorneys and all members or

persons acting in concert or participation with it, (a) from breaching or otherwise violating the present collective bargaining agreement between plaintiff and defendant Union, and (b) from engaging in or inciting any strike or work stoppage, or by picketing or by issuing, directly or indirectly, any orders, directions, instructions, appeals or by any like or related acts or conduct or by permitting any such to remain in existence or effect, otherwise preventing or interfering in any way with the discharging, loading, moving or operating of the SS FRANCES, the SS KATHRYN, the SS BEATRICE, the SS ELIZABETH or any other vessel owned or operated by the plaintiff, A. H. BULL STEAMSHIP COMPANY, so long as the present collective bargaining agreement between the [87] parties remains in effect, and for such other and further and different relief as in the premises may be deemed necessary, adequate and proper.

SATTERLEE, BROWNE & CHERBONNIER
Attorneys for Plaintiff
Office and P. O. Address
30 Broad Street
New York 4, New York

(Verified September 4, 1957.)

[90] **Memorandum Opinion**

(Special Term, Part I) By Brown, J.

Dated September 19, 1957

SUPREME COURT

KINGS COUNTY

A. H. BULL STEAMSHIP COMPANY,

vs.

THOMAS ATKINS as President of the INTERNATIONAL ORGANIZATION MASTERS, MATES AND PILOTS, INC. et al, etc.

Plaintiff moves for an injunction *pendente lite* in an action arising out of the breach of a collective bargaining agreement.

Defendants cross-move to dismiss the amended complaint upon the ground of insufficiency and upon the further ground that the complaint fails to comply with the requirements of Section 876a of the Civil Practice Act.

This court has already determined that this case is a "labor dispute" as that term is defined in said section (Decision of Cone, J., NYLJ 9/5/57, p. 9, col. 8). By the same decision the original complaint was dismissed with leave to amend on the ground that the requirements of subdivisions 1 and 4 of Section 876a had not been complied with.

The allegations of the amended complaint now meet the requirements of that section (*Carroll Towing Co.* v. *Bradley*, 91 N. Y. S. [2] 431 [not otherwise reported], affd. 275 App. Div. 1022). Accordingly, the cross-motion to dismiss the amended complaint is denied.

The hearing required by Section 876a shall be held before Official Referee John MacCrate.

Settle order on notice.

[91]

Memorandum Opinion

(Special Term, Part I) By Brown, J.

Dated September 19, 1957

SUPREME COURT

KINGS COUNTY

A. H. BULL STEAMSHIP COMPANY

vs.

PAUL HALL, as Secretary-Treasurer, and CLAUD SIMMONS, EDWARD MOONEY and JOSEPH ALGINA, each as Assistant Secretary-Treasurer of the SEAFARERS' INTERNATIONAL UNION OF NORTH AMERICA AFL-CIO, et ano.

The motions herein are companion to the motions made in the action by the same plaintiff against Atkins et al., decided herewith. With the exception, in the cross-motion to dismiss, of the additional factor relating to lack of jurisdiction, these motions seek similar relief.

The original complaint herein was dismissed on the same grounds as in the Atkins case (see decision Cone, J., N. Y. L. J. 9/5/57, p. 9, col. 8). Here too the allegations of the amended pleading now meet the requirements of section 876-a of the Civil Practice Act. While counsel for the defendants contends that this court is pre-empted and ousted of jurisdiction by reason of the National Labor Relations Act, the complaint on its face does not charge the defendants with any unfair labor practice as to bring

into action the provisions of the Act, which empower the National Labor Relations Board "to prevent any person from engaging in any unfair labor practice * * * [defined by the Act] affecting commerce." (*Guss* v. *Utah L. R. B.*, 353 U. S. , 1 L. Ed. 2d 601, § 160, National Labor Relations Act.) While it may be that on the hearing and trial the parties by proof may establish that the provisions of the National Labor Relations Act are applicable, on the complaint herein, which is the only matter to be considered on a motion of this character, the cross-motion to dismiss must be denied.

[92] As the court held in dismissing the original complaint "a breach of a collective bargaining agreement constitutes a controversy concerning terms and conditions of employment and is a labor dispute within the meaning of Section 876-a of the Civil Practice Act." (See cases cited therein.)

Accordingly, this motion is set down for a hearing as provided for in the companion motion. Submit order on notice.

Opinion Below

[102]

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

A. H. Bull Steamship Co.,
Plaintiff,

against

Seafarers' International Union of North America, Atlantic and Gulf District, AFL-CIO,
Defendant.

Civil No. 18007

September 27, 1957

Appearances:

Satterlee, Browne & Cherbonnier
and
Donovan, Leisure, Newton & Irvine
Attorneys for Plaintiff

James V. Hayes
A. V. Cherbonnier
Sidney P. Howell, Jr.
Helmut J. F. Furth
Of Counsel

Seymour W. Miller,
Attorney for Defendant

Bruchhausen, D. J.

The plaintiff, an operator of ships engaged in the transportation business, instituted this action against the defendant, Labor Union, for specific performance of a col-

lective bargaining agreement, entered into between the parties and [103] for other relief. The subject motion is for provisional remedies, enforcing the agreement, pendente lite.

The facts, not in dispute, in substance, are as follows:

1. That the parties entered into a collective bargaining agreement in October 1956, which will not expire by its terms until September 30, 1958.

2. That the agreement and predecessor agreements contain a provision that there shall be no strikes, lockouts or stoppages of work while the provisions of the agreement are in effect.

3. That the defendant shall furnish to the plaintiff capable and competent personnel in ample time to prevent any delay in the scheduled departure of its vessels.

4. That on August 19, 1957, the defendant called a strike against the plaintiff and that the strike has been in existence ever since.

On June 17, 1957, the defendant served upon the plaintiff a notice to open negotiations for a revision of wages and other monetary matters and negotiations were had, which were unsuccessful.

The plaintiff contends that the defendant entered into the negotiations in bad faith and that its motive was to use them to further its attack on American Coal Shipping Inc., which has taken over stock control of the plaintiff. That [104] claim has no particular relevance at his time.

The said collective bargaining agreement fails to clothe the defendant with the right to strike or to breach the agreement for any of the reasons advanced by the plaintiff. The only reference therein to the opening of negotiations for changes in the agreement is that they may be discussed but no right was thereby conferred upon either

party to terminate the agreement on that account. The provision so referred to is that "applications by either party to open negotiations for changes in the wage scale or any monetary matters any time during the life of this agreement shall not be deemed cause for termination of this agreement."

The work stoppages have caused and are causing serious loss, damage and irreparable injury to the plaintiff for which it has no adequate legal remedy.

The principal question herein pertains to the interpretation of certain provisions of the 1932 Norris-LaGuardia Act and of the later act, the Labor Management Relations Act of 1947. The Norris-LaGuardia Act of 1932 (29 U. S. C. 101 et sequa), particularly Section 104 thereof, sets forth in substance that no federal court shall issue any order restraining a person or persons, involved in a labor dispute, from ceasing or refusing to perform any work, whereas Section 301 of the Labor Management Relations Act of 1947 (29 U. S. C. [105] 185) conferred jurisdiction upon the federal courts in suits for violation of contracts between an employer and a labor organization engaged in interstate commerce, regardless of the amount in controversy or the citizenship of the parties.

It will be recalled that in 1932, during the depth of the economic depression, collective bargaining in the labor field was practically non-existent. The legislative policy, proclaimed in Section 102 of the 1932 Norris-LaGuardia Act was that workers should be unhampered in organizing. It was stated therein that "the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment."

The said 1932 Act was aimed at correcting "existing abuses of the injunctive remedy in labor disputes. Federal courts had been drawn into the field under the guise either

of enforcing federal statutes, principally the Sherman Act, or through diversity of citizenship jurisdiction." *Brotherhood of Railroad Trainmen* v. *Chicago River and Indiana Railroad Co.*, 353 U. S. 30, 40.

The aforementioned Section 104 of the Norris-LaGuardia Act thus removed jurisdiction that the federal courts possessed, though by circuitous route. Employers, hampered by local law, would work their way into federal courts, before [106] the decision in *Erie Railroad* v. *Thompkins*, 304 U. S. 64, and obtain favorable jurisdiction in Labor disputes, resulting in strike injunctions.

Section 301 of the Labor Management Relations Act of 1947 vested federal courts with jurisdiction to impose certain responsibility upon labor unions which had not theretofore prevailed. The significant element of Section 301 of the said Act was not that unions had the right to resort to the federal courts, since they could always have done so, if the other jurisdictional requirements were met, just as employers were entitled to do, within the limitations of the 1932 Act, but that in cases involving labor contracts, the federal courts by Section 301 were accorded complete jurisdiction, regardless of the amount involved, or of other jurisdictional requirements, and that in order to make labor unions amenable to such jurisdiction, they could be sued as an entity and money judgments could be enforced against their assets, though not against the assets of the individual members.

The 1932 Norris-LaGuardia Act circumscribed federal jurisdiction, only after other jurisdictional requirements, such as diversity, or amount involved etc., were met. On the other hand, the Labor Management Relations Act of 1947 conferred such jurisdiction.

In situations not involving labor contracts, such as [107] collective bargaining agreements, employers are governed by local laws as well as by the Norris-LaGuardia Act. How-

ever, by the enactment of the Labor Management Relations Act of 1947 and particularly Section 301 the Congress extended the jurisdiction of the federal courts, without reservation, to labor contract disputes whereas in the earlier 1932 Act, it limited such jurisdiction, as stated in Section 104, despite compliance with the other jurisdictional requirements. The said Section 104 constituted a complete restriction, not only as to labor contract controversies but also as to numerous other labor suits instituted in the federal courts.

In the interest of industrial peace, the federal courts under the 1947 Act were given jurisdiction of labor contracts without reservation or denial of any of their other inherent or traditional powers, legal or equitable. *Textile Workers Union of America* v. *Lincoln Mills of Alabama*, 353 U. S. 448.

Labor was not thereby stripped of its primary weapon without the substitution of any reasonable alternative. *Brotherhood of Railroad Trainmen et al.* v. *Chicago River & Indiana R.R. Co., supra.*

That the primary objective of the 1932 Norris-LaGuardia Act was to aid workers in their efforts to organize and enter into collective bargaining agreements, rather than the consideration of the rights and remedies of the parties [108] thereunder, subsequent to the execution of such agreement, is emphasized in the latter mentioned case, wherein the Court said:

> "The Norris-LaGuardia Act, on the other hand, was designed primarily to protect working men in the exercise of organized, economic power, which is vital to collective bargaining."

A principal purpose of the more recent Act, the Labor Management Relations Act, 1947, not contemplated by the Norris-LaGuardia Act, was the enforcement of collective

bargaining agreements. It provides that "suits for violation of contracts between an employer and a labor organization * * * may be brought in any district court of the United States * * *." (Section 301(a)).

In the recent case of *Textile Workers of America* v. *Lincoln Mills of Alabama,* 353 U. S. 448 (decided June 3, 1957), the plaintiff Union invoked the jurisdiction of the federal court under said Section 301 (also referred to as 29 U. S. C. 185) to compel the defendant, the employer, to submit to arbitration, as provided for by the terms of the collective bargaining agreement, entered into between the parties. The agreement also contained a no-strike clause, similar to the one in the case at bar. The Court, in its opinion, quoted from the Senate and House Reports, which preceded the enactment of the statute. It appears in both reports that the primary concern was that [109] unions and employers should both be bound to collective bargaining contracts and be governed by "the usual processes of the law."

The intent and purpose of the proposed legislation, reported by the Senate, quoted in the opinion in the *Textile Workers* case, in substance, is as follows:

1. That the chief advantage which an employer can reasonably expect from a collective labor agreement is the assurance of uninterrupted operation during the term of the agreement.

2. That without some effective method of assuring freedom from economic warfare for the term of the agreement there is little reason why an employer would desire to sign such a contract.

3. That to encourage the making of agreements and to promote industrial peace through faithful performance by the parties, collective agreements affecting interstate commerce should be enforceable in the federal courts.

4. That Section 185 in the proposed law provides for suits by and against unions as legal entities.

Opinion Below

It will be noted that the Senate Committee, so reporting, did not limit faithful performance to any particular breach or to any particular party, committing the breach. It clearly meant to insure faithful performance of the entire agreement to the end that there should be industrial peace. [110] There could be no such assurance if either party, at will, might breach the contract by refusal to perform, and there be no adequate enforcement procedure. Non performance, without the remedy of enforcement, would completely set at nought the object of the statute, as so stated, and render the legislation practically impotent.

The Court in the *Lincoln Mills* case, *supra,* in analysis of the said House and Senate Reports, wrote:

> "Thus collective bargaining contracts were made 'equally binding and enforceable on both parties.' Id., p. 15. As stated in the House Report, supra, p. 6, the new provision 'makes labor organizations equally responsible with employers for contract violations and provides for suit by either against the other in the United States district courts.' To repeat, the Senate Report, supra, p. 17, summed up the philosophy of Section 301 as follows: 'Statutory recognition of the collective agreement as a valid, binding, and enforceable contract is a logical and necessary step. It will promote a higher degree of responsibility upon the parties to such agreements, and will thereby promote industrial peace.'"

In the *Lincoln Mills* case, *supra,* the Court further said:

> "Plainly the agreement to arbitrate grievance disputes is the quid pro quo for an agreement not to strike. Viewed in this light, the legislation does more than confer jurisdiction in the federal courts over labor organizations. It expresses a federal policy that federal courts should enforce [111] these agreements on behalf of or against labor organizations and that industrial peace can be best obtained only in that way. * * *

Opinion Below

"Though a literal reading (of provisions of the Norris-LaGuardia Act) might bring the dispute within the terms of the Act (see Cox, Grievance Arbitration in the Federal Courts, 67 Harv. L. Rev. 591, 602-604) we see no justification in policy for restricting Section 301(a) to damage suits, leaving specific performance of a contract to arbitrate grievance disputes to the inapposite procedural requirements of that Act. Moreover, we held in Virginian R. Co. *v.* System Federation, 300 U. S. 515, and in Graham *v.* Brotherhood of Firemen, 338 U. S. 232, 237, that the Norris-LaGuardia Act does not deprive federal courts of jurisdiction to compel compliance with the mandates of the Railway Labor Act. The mandates there involved concerned racial discrimination. Yet those decisions were not based on any peculiarities of the Railway Labor Act. We followed the same course in Syres *v.* Oil Workers International Union, 350 U. S. 892, which was governed by the National Labor Relations Act. There an injunction was sought against racial discrimination in application of a collective bargaining agreement; and we allowed the injunction to issue. The congressional policy in favor of the enforcement of agreements to arbitrate grievance disputes being clear, there is no reason to submit them to the requirements of Section 7 of the Norris-LaGuardia Act."

It is plain that the statute empowers this Court to invoke the remedy of specific performance, also that the undisputed facts presented warrant such procedure. That remedy [112] embraces affirmative as well as negative acts. *Kulukundis Shipping Co. v. Amtorg Trading Corporation*, 2 Cir., 126 F. 2d 978.

The plaintiff's motion is granted. The defendant's cross motion is denied. Settle order on two days' notice at which time the parties may submit their proposals as to security and preference of the trial.

/s/ WALTER BRUCHHAUSEN
U. S. D. J.

Counter-Order as Submitted by Defendant Below

• • •

[116] Plaintiff, having moved herein for a preliminary injunction, and defendant, having cross-moved for an order 1) dismissing the complaint, or, in the alternative 2) dismissing the complaint, pro tanto, insofar as it seeks an injunction and declaratory judgment, as well as a stay on the ground of another action pending at the time between the parties in the Supreme Court of the State of New York, in and for the County of Kings, wherein the same injunctive relief is sought as is sought herein, or in the alternative 3) that all further proceedings in this Court be stayed upon the grounds of the pendency of the aforesaid State Court action, and the Court having considered the complaint herein, dated September 16, 1957, and the affidavit of Milton Williams, sworn to September 16, 1957, in support of the motion for a preliminary injunction, the affidavits of Paul Hall, Claude Simmons, and Seymour W. Miller, together with the Exhibits annexed thereto, all sworn to September 18, 1957, in opposition to the said motion and in support of the said cross-motion, and after hearing Donovan, Leisure, Newton & Irvine, Esqs., and Satterlee, Browne & Cherbonnier, Esqs., by James V. Hayes, Esq., of counsel, in support of the said motion and in opposition to the said cross-motion, and Seymour W. Miller, Esq., in opposition to the said motion and in support of the said cross-motion, and the Court having received and considered the briefs of counsel and after due deliberation, the Court having filed its opinion [117] herein, on September 27, 1957, and plaintiff having filed, and the Court having approved, the undertaking prescribed by Rule 65(c) of the Federal Rules of Civil Procedure, it is, therefore,

ORDERED that, effective October 1, 1957, at o'clock, Eastern Daylight Saving Time, defendant Seafarers' International Union of North America, Atlantic and Gulf

Counter-Order as Submitted by Defendant Below

District, AFL-CIO, its officers, agents, servants, employees and attorneys, and those persons in active concert or participating with them who receive actual notice of this order, be and the same hereby are, restrained, during the pendency of this action, from picketing, striking, or otherwise causing any work stoppage aboard any of the vessels owned or operated by plaintiff, wherever such vessels may be, and it is,

FURTHER ORDERED that the defendant's cross-motion be and the same hereby is in all respects denied, and it is

FURTHER ORDERED that this case be set down for trial at such time as the Court may direct upon three days notice of motion made subsequent to the filing, as provided by law, of the answer herein.

Dated: Brooklyn, New York, September , 1957.

Enter

.....

U. S. D. J.

Order Granting Preliminary Injunction Appealed From

* * *

[119] Plaintiff having moved herein for an order enjoining defendant, Seafarers' International Union of North America, Atlantic and Gulf District, AFL-CIO, *pendente lite* and said defendant having cross moved herein and these causes having come before the Court on September 18, 1957, and the Court having heard argument by James V. Hayes, Esq., counsel for plaintiff, and Seymour W. Miller, Esq., counsel for defendant, and received and considered the affidavits and briefs filed on behalf of the respective parties, and, after due deliberation, it appearing that the Court has jurisdiction of this action under Section 301 of the Labor Management Relations Act of 1947 (29 U. S. C., Section 185), that there is presently in existence a collective bargaining agreement between the parties hereto, which agreement, by its terms, will not expire until September 30, 1958, and that defendant has violated and is presently violating the provisions of said collective bargaining agreement, to wit, Article I, Section 2, and Article II, Section 4 thereof, and it further appearing that, if defendant not be restrained preliminarily, plaintiff will suffer irreparable injury for which it has no adequate legal remedy, the Court having, on September 27, 1957, filed its opinion thereon, and [120] plaintiff having filed, and the Court having approved, the undertaking as prescribed by Rule 65(c) of the Federal Rules of Civil Procedure, it is, therefore,

ORDERED that, effective on October 1, 1957, at 5 P. M., Eastern Daylight Savings Time, defendant, SEAFARERS' INTERNATIONAL UNION OF NORTH AMERICA, Atlantic and Gulf District, AFL-CIO, its officers, agents, members, servants, employees, attorneys, and all persons in active concert or participation with them, who shall or may receive actual notice of this Order, be and the same hereby are enjoined and restrained, during the pendency of this action, from picketing, striking, or inciting, causing, inducing, or, in

any manner, directly or indirectly, supporting any work stoppage aboard any of the vessels owned or operated by plaintiff, A. B. BULL STEAMSHIP Co., or any of its subsidiaries, wherever any such vessels may be situate or, during the pendency of this action, may call; and it is

FURTHER ORDERED that the said defendant specifically perform its agreement to furnish the plaintiff with capable, competent, and physically fit persons when and where they are required, and of the ratings needed to fill vacancies necessitating the employment of Unlicensed Personnel, in ample time to prevent any delay in the scheduled departure of any vessel covered by said agreement, and it is

FURTHER ORDERED that defendant's cross-motion be and the same is hereby in all respects denied, and it is

[121] FURTHER ORDERED that the Court's opinion filed herein on September 27, 1957, shall constitute the findings of fact and conclusions of law as required by Rule 52(a) of the Rules of Civil Procedure.

Dated: Brooklyn, New York, September 30th, 1957.

Enter

s/ WALTER BRUCHHAUSEN
United States District Judge

Stipulation

* * * *

[124] WHEREAS, this Court has on September 30, 1957, issued a Preliminary Injunction against the defendant herein, it is, therefore, subject to the approval of this Court,

STIPULATED AND AGREED that this case shall be set down for trial at such time as the Court may direct upon motion by either party hereto made upon three days' notice at any time subsequent to the filing, as provided by law, of defendant's answer herein.

Dated: Brooklyn, New York,
September 30, 1957.

SATTERLEE BROWNE & CHERBONNIER
DONOVAN, LEISURE, NEWTON & IRVINE

By JAMES V. HAYES

.....
Attorneys for Plaintiff

By SEYMOUR W. MILLER

.....
Attorney for Defendant

SO ORDERED:

WALTER BRUCHHAUSEN
U. S. D. J.

Notice of Appeal

* * *

[125] SIRS:

PLEASE TAKE NOTICE that defendant Seafarers' International Union of North America, Atlantic and Gulf District, AFL-CIO, hereby appeals from the order herein dated September 30, 1957, granting a temporary injunction and from each and every part thereof and from the opinion of the Court herein dated September 27, 1957 upon which the aforesaid order was based, and each and every part thereof.

Dated: Brooklyn, New York
September 30, 1957.

Yours, etc.

SEYMOUR W. MILLER
Attorney for Defendant
Office & P. O. Address
26 Court Street
Brooklyn 1, New York

To:

Clerk of the United States District
Court for the Eastern District of New York

Donovan, Leisure, Newton & Irvine, Esqs.
2 Wall Street
New York, N. Y.

and

Satterlee, Browne & Cherbonnier, Esqs.
30 Broad Street
New York, N. Y.
Attorneys for Plaintiff